

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: LIBOR-BASED FINANCIAL  
INSTRUMENTS ANTITRUST LITIGATION

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Civ. No. 11-md-2262 (NRB)

THIS DOCUMENT RELATES TO:

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33-35 GREEN POND ROAD ASSOC., LLC,  
on behalf of itself and all others similarly  
situated,

Plaintiff,

v.

BANK OF AMERICA CORPORATION, *et al.*,  
Defendants.

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Civ. No. 12-cv-5822 (NRB)

COURTYARD AT AMWELL II, LLC, *et al.*,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION, *et al.*,  
Defendants.

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Civ. No. 12-cv-6693 (NRB)

**DECLARATION OF JASON RABE  
REGARDING NOTICE**

JASON RABE, declares and states as follows:

1. I am a Program Manager at Rust Consulting, Inc. (“Rust”). Rust was appointed as Notice and Claims Administrator pursuant to ¶ 5 of the April 30, 2020 Order Approving Non-Defendant OTC Plaintiff’s Notice Program, Appointing Rust Consulting as the Notice And Claims Administrator, Huntington Bank as the Escrow Agent, and Preliminarily Approving Plan of Allocation Regarding Settlements in Non-Defendant OTC Action (the “Order Approving Notice Program”). I have the responsibility for overseeing all aspects of the notice and claims administration services performed by Rust with respect to the Settlements.

2. I submit this declaration in order to provide the Court and the parties to the above-captioned litigation with information regarding the mailing of the Postcard Notice and the publication of the Summary Notice (the “Publication Notice”), and to confirm that notice was provided in accordance with the Order Approving Notice Program. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

**THE PUBLICATION AND INTERNET NOTICES**

3. Rust’s services included mailing the Postcard Notice to potential Non-Defendant OTC Class Members (and where requested mailing the Long-Form Notice); coordinating the Publication Notice and paid media program with Kinsella Media, LLC (“KM”); establishing an interactive website to provide information and Court-approved documents to Non-Defendant OTC Class

Members concerning the proposed Settlements; and responding to calls and requests for the Long-Form Notice and other questions posed by potential members of the Non-Defendant OTC Class.

4. Pursuant to the Order Approving Notice Program, the Court approved the Notice Program submitted by KM. KM is an advertising and notification consulting firm in Washington, D.C. specializing in the design and implementation of class action and bankruptcy notification programs.

5. The declaration of Shannon R. Wheatman further certifying that the Notice Program was effectuated in accordance with the Order Approving Notice Program is being filed contemporaneously herewith.

#### **MAILING OF THE POSTCARD NOTICE**

6. A partial list of potential Non-Defendant OTC Class Members was compiled based on information provided by certain of the Non-Defendant OTC Financial Institutions. Rust received files from nine different institutions containing over 95,000 records.

7. Rust entered the data referenced above into a segregated database (the “Rust Mailing Database”) to be used for mailing the Postcard Notices to potential Non-Defendant OTC Class Members. The data was electronically scrubbed to eliminate duplicate names and addresses and incomplete records and forwarded to the National Change of Address (“NCOA”) service to ensure adequate address formatting and to qualify for postal discounts. As a result of the processes above, after duplicate or incomplete records were removed, 8,261 potential Non-Defendant OTC Class Members remained for mailing.

8. Rust also purchased lists of institutional investors from Dun and Bradstreet (12,708 names and addresses) as well as Vickers (8,866 names and addresses).

9. Pursuant to ¶ 9 of the Order Approving Notice Program, on June 12, 2020, Rust caused the Postcard Notice to be printed and sent to the 29,835 potential Non-Defendant OTC Class Members referred to in ¶¶ 7 and 8 above. A copy of the printed Postcard Notice that was sent is attached hereto as Exhibit A.

10. On July 23, 2020, as a result of additional names and addresses of potential Non-Defendant Class Members received from brokerage firms, banks, institutions and other nominees, Rust mailed an additional 23,124 Postcard Notices.

11. Rust leases and maintains a Post Office Box (PO Box 44, Minneapolis, MN 55440-0044) for the receipt of all undeliverable mail and written communications necessary to implement the Settlements.

12. As of September 13, 2020, the United States Postal Service (“USPS”) had returned 5,895 Postcard Notices as undeliverable without forwarding addresses. Of these, Rust was able to locate 610 new addresses, through an information supplier to which Rust subscribes. Postcard Notices were promptly mailed to these potential Non-Defendant OTC Class Members at the updated addresses.

13. As of September 13, 2020, the USPS had returned 31 Postcard Notices with forwarding addresses. Postcard Notices were promptly re-mailed to the potential Non-Defendant OTC Class Members at the updated addresses.

14. Additionally, as of September 13, 2020, in response to telephone and email requests for Long-Form Notices and Claim Forms made directly to Rust by potential Non-Defendant OTC Class Members, 45 Long Form Notices were mailed.

#### **THE SETTLEMENT WEBSITE**

15. Rust established and maintains a website, [www.LiborGreenPondSettlement.com](http://www.LiborGreenPondSettlement.com) (the “Website”), that enables anyone, including Non-Defendant OTC Class Members, to obtain information about the Settlements and to access important documents related to the Settlements. Specifically, the Website contains a listing of the deadlines for requesting exclusion from the Non-Defendant OTC Class, objecting to the Settlements and filing a Proof of Claim, as well as contact information and the date, time and location of the Fairness Hearing. The Website also contains “links” to the Postcard and Long-Form Notice, Proof of Claim, and important Court documents including, among others, the Settlement Agreements, motions for preliminary and final approval of the Settlement Agreements and the motion for attorneys’s fees and reimbursement of expenses, the plan of allocation, and Court orders. The “links” permit any person, including potential Non-Defendant OTC Class Members with internet access, to view, download, and print copies of the Long-Form Notice and Proof of Claim, thereby providing Non-Defendant OTC Class Members with information about the Settlements at their convenience. Additionally, the Website allows individuals and entities to submit electronic claims.

16. The Website went “live” on June 12, 2020 and as of September 13, 2020, the Website has had 108,855 unique visitors. In addition, the Long-Form Notice has been downloaded 545 times. Proof of Claims are accepted either through the Website or by mail until the January 3, 2021

deadline. The Website will be updated as the status of the Settlements change (e.g., a deadline passes).

17. Rust also established a case-dedicated e-mail address, [info@LiborGreenPondSettlement.com](mailto:info@LiborGreenPondSettlement.com), to allow persons to email the Claims Administrator with questions or inquiries. The e-mail address was activated on June 12, 2020 and is listed in the notices and on the website. As of September 13, 2020, Rust has received and processed approximately 83 e-mail inquiries from potential Non-Defendant OTC Class Members.

#### **TOLL-FREE TELEPHONE HOTLINE**

18. Rust also established a toll-free telephone hotline (1-866-403-5447) that became operational on June 12, 2020. Potential Non-Defendant OTC Class Members calling the hotline are given the key dates for filing deadlines as well as the website address for additional information. At the end of the recorded message, potential Non-Defendant OTC Class Members can remain on the line to speak with a representative. The recorded information is available 24 hours a day, 7 days a week. As of September 13, 2020, Rust has received 299 calls on this line.

#### **REPORT ON REQUESTS FOR EXCLUSION AND OBJECTIONS RECEIVED TO DATE**

19. Pursuant to ¶ 15 of the Order Approving Notice Program, Requests for Exclusion from the Non-Defendant OTC Class were required to be mailed to the Claims Administrator, postmarked no later than August 18, 2020 and addressed to: LIBOR Green Pond Settlement, c/o Rust Consulting - 6770, PO Box 44, Minneapolis, MN 55440-0044. However, the notices that were sent to the class mistakenly listed August 31, 2020 as the deadline to exclude oneself from the Settlement Agreements, instead of August 18, 2020. As of September 14, 2020, there were a total of 10 opt-

out requests received which comprise 37 entities who have requested exclusion. Of those 10 opt-out requests, five were received prior to August 18, 2020, and five were received between August 18 and August 31, 2020.<sup>1</sup> It's my understanding that both the plaintiffs and the Settling Defendants do not intend to argue that the five opt-out requests received after August 18 were untimely since these entities complied with the dates set forth in the notice. And, Rust would respectfully suggest that given that the notice disseminated to potential class members listed August 31 as the opt-out deadline, that the five opt-out requests received after August 18 but before August 31, be deemed timely. A list of all requests for exclusion are attached as Exhibit B.

20. It's my understanding that all 37 of the entities that requested exclusion from the Settlement Agreements are plaintiffs in cases in this MDL (or were plaintiffs as some may have settled). And, although 37 entities submitted timely opt-out requests, five of those entities stated

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<sup>1</sup> The five opt-out requests received between August 18 and August 31 were: 1) The Charles Schwab Corporation, Charles Schwab Bank, N.A., Charles Schwab & Co., Inc., Schwab Money Market Fund, a series of The Charles Schwab Family of Funds, Schwab Value Advantage Money Fund, a series of the Charles Schwab Family of Funds, Schwab Retirement Advantage Money Fund, a series of the Charles Schwab Family of Funds, Schwab Investor Money Fund, a series of the Charles Schwab Family of Funds, Schwab Cash Reserves, a series of the Charles Schwab Family of Funds, Schwab U.S. Dollar Liquid Assets Fund, a series of the Charles Schwab Worldwide Funds, plc, Schwab Short-Term Bond Market Fund, a former series of Schwab Investments, Schwab Total Bond Market Fund, a former series of Schwab Investments, Schwab Yield Plus Fund, a former series of Schwab Investments; Schwab YieldPlus Liquidation Trust; 2) Federal Home Loan Mortgage Corporation; 3) The Federal Deposit Insurance Corporation as Receiver for Amcore Bank, N.A.; IndyMac Bank, F.S.B.; Lydian Private Bank; Washington Mutual Bank; and Westernbank Puerto Rico; 4) Principal Financial Group, Inc., Principal Commercial Funding II, LLC, Principal Mortgage Value Investors A, LLC, Principal Capital Interest Only I, LLC; and 5) the Bay Area Toll Authority.

that they were not aware of any specific transactions that are eligible for the Settlements, but that they were submitting opt out requests in an abundance of caution.<sup>2</sup>

21. Pursuant to ¶ 17 of the Order Approving Notice Program, objections were required to be postmarked or delivered no later than August 18, 2020. Based on the same mistake mentioned in ¶ 19 above, the actual notice sent to the class mistakenly identified the objection deadline as August 31, 2020, or, 13 days following the actual objection deadline set forth in the Order Approving Notice Program. Although objections are not to be sent to Rust, nevertheless, as part of its standard procedures, Rust personnel examine all mail received to search for, among other things, Requests for Exclusion and objections. As of September 14, 2020, Rust has received no objections.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 14th day of September, 2020 in Minneapolis, Minnesota.

  
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Jason Rabe

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<sup>2</sup> Specifically, the five entities who opted out, but weren't aware of any qualifying transactions were: the City of Philadelphia, the Pennsylvania Intergovernmental Cooperation Authority, Salix Capital U.S. Inc., Darby Financial Products, and Capital Ventures International.



# **EXHIBIT A**

Liborgreenpondsettlement  
c/o Rust Consulting, Inc. - 6770  
P.O. Box 44  
Minneapolis, MN 55440-0044

*Court-Ordered Legal Notice*

**If You Owned a U.S.  
Dollar LIBOR-Based  
Instrument Between  
August 2007 and  
May 2010**

***You May Be Eligible for  
Payments from \$21.7  
Million in Settlements***

**This notice is only a summary.**

**For more information & a  
detailed notice:**

**1-866-403-5447**

**[www.liborgreenpondsettlement.com](http://www.liborgreenpondsettlement.com)**

PRESORTED  
FIRST-CLASS MAIL  
U.S. POSTAGE

**PAID**

Rust Consulting, Inc.



- UAP - <<SequenceNo>>

<<NAME1>>

<<NAME2>>

<<ADDRESS1>>

<<ADDRESS2>>

<<CITY>> <<STATE>> <<ZIP>>

<<COUNTRY>>

There are Settlements with Barclays, Bank of America, Citigroup, HSBC, and JPMorgan (“Settling Defendants”) that impact individuals and institutions that entered into over-the-counter financial instruments directly with Ally, American Express, Bancwest, Bank of New York, BB&T, BBVA, BMO Harris, Capital One, Fifth Third, Goldman Sachs, Harris Financial, Keycorp, M&T, Metlife, Morgan Stanley, Northern Trust, PNC, Regions, State Street, Suntrust, TD Bank, Unionbancal, U.S. Bancorp or Wells Fargo, including their subsidiaries, affiliates, predecessors and successors (“Financial Institutions”). The financial instruments include interest rate swaps, forward rate agreements, asset swaps, collateralized debt obligations, credit default swaps, inflation swaps, total return swaps, options, and floating-rate notes.

The litigation claims that the banks manipulated U.S. Dollar LIBOR during the financial crisis, artificially lowering the rate for their own profit, which resulted in purchasers receiving less interest than they otherwise would have. The Settling Defendants deny all claims of wrongdoing.

### **Am I included?**

You are included in the Settlements if you (individual or entity): Transacted with a Financial Institution in the United States in a U.S. Dollar LIBOR-Based Instrument (as defined in the Settlements), which you owned or on which you otherwise received interest based upon U.S. Dollar LIBOR at any time between August 2007 and May 2010.

**What do the Settlements provide?**  
The Settlements will pay eligible class members who submit valid claims. Additionally, the Settling Defendants will cooperate with the Plaintiffs in their ongoing litigation against the Non-Settling Defendants.

### **How can I get a payment?**

You must submit a Proof of Claim to get a payment. You can submit a Proof of Claim online or by mail. The deadline to submit a Proof of Claim is **January 3, 2021**. You are entitled to receive a payment if you have a qualifying transaction with a Financial Institution. At this time, it is unknown how much each class member who submits a valid claim will receive.

### **What are my rights?**

If you are a member of the class and you do not file a timely claim, you will lose your right to receive money or benefits from the Settlements. If you would like to retain your right to file your own lawsuit against Settling Defendants, you must opt out by **August 31, 2020**. If you remain a party to the Settlements, you may object to the Settlements by **August 31, 2020**. The Court will hold a hearing on **October 5, 2020** to consider whether to approve the Settlements and approve Class Counsel’s request of attorneys’ fees of up to 33% of the Settlement Funds, plus reimbursement of costs and expenses. You or your own lawyer may appear and speak at the hearing at your own expense.

# Exhibit B

**Libor Green Pond Settlement - List of Opt-Outs from Settlement Classes**

**Summary:** The Settlement Administrator receive 10 timely Exclusion requests for a total of 37 entities.

1. QUINN EMANUEL ON BEHALF OF SALIX CAPITAL US INC
  - Salix Capital US, Inc.
2. QUINN EMANUEL ON BEHALF OF DARBY FINANCIAL PRODUCTS & CAPITAL VENTURES
  - Darby Financial Products
  - Capital Ventures International
3. QUINN EMANUEL ON BEHALF OF THE CITY OF PHILADELPHIA & THE PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY
  - The City of Philadelphia, Pennsylvania
  - The Pennsylvania Intergovernmental Cooperation Authority
4. QUINN EMANUEL ON BEHALF OF PRUDENTIAL INVESTMENT PORTFOLIOS
  - Prudential Investment Portfolios 2, f/k/a Dryden Core Investment Fund, o/b/o PGIM Core Short-Term Bond Fund (f/k/a Prudential Core Short-Term Bond Fund)
  - PGIM Core Ultra Short Bond Fund (f/k/a Prudential Core Taxable Money Market fund)
5. KELLOGG HANSEN TODD FIGEL & FREDERICK PLLC ON BEHALF OF NATIONAL CREDIT UNION ADMINISTRATION
  - National Credit Union Administration as liquidating agent for U.S. Central Federal Credit Union
  - National Credit Union Administration as liquidating agent for Western Corporate Federal Credit Union
  - National Credit Union Administration as liquidating agent for Members United Corporate Federal Credit Union
  - National Credit Union Administration as liquidating agent for Southwest Corporate Federal Credit Union
  - National Credit Union Administration as liquidating agent for Constitution Corporate Federal Credit Union
6. PRINCIPAL LIFE INSURANCE COMPANY
  - Principal Financial Group, Inc.
  - Principal Commercial Funding II, LLC
  - Principal Mortgage Value Investors A, LLC
  - Principal Capital Interest Only I, LLC

7. BAY AREA TOLL AUTHORITY
  - Bay Area Toll Authority (BATA)
8. FEDERAL HOME LOAN MORTGAGE CORPORATION
  - Freddie Mac
9. FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") AS RECEIVED FOR CLOSED BANKS ZELLE LLP
  - Amcore Bank, NA
  - IndyMac Bank, FSB
  - Lydian Private Bank
  - Washington Mutual Bank
  - Westernbank Puerto Rico
10. CHARLES SCHWAB BANK NATIONAL ASSOCIATION
  - The Charles Schwab Corporation
  - Charles Schwab Bank, NA
  - Charles Schwab & Co, Inc.
  - Schwab Money Market Fund, a series of The Charles Schwab Family of Funds
  - Schwab Value Advantage Money Fund, a series of The Charles Schwab Family of Funds
  - Schwab Retirement Advantage Money Fund, a series of The Charles Schwab Family of Funds
  - Schwab Investor Money Fund, a series of The Charles Schwab Family of Funds
  - Schwab Cash Reserves, a series of The Charles Schwab Family of Funds
  - Schwab Advisor Cash Reserves, a series of The Charles Schwab Family of Funds
  - Schwab U.S Dollar Liquid Assets Fund, a series of The Charles Schwab Worldwide Funds plc
  - Schwab Short-Term Bond Market Fund, a former series of Schwab Investments
  - Schwab Total Bond Market Fund, a former series of Schwab Investments
  - Schwab YieldPlus Fund, a former series of Schwab Investments
  - Schwab YieldPlus Liquidation Trust